

Feb. 27. 1759.

MEMORIAL

FOR

Alexander Falconer, Keeper of the Register of Sasines for the Shire of Berwick.

Marion Wilson
Daughter to Thomas Wilson
MARION WILSON, Daughter to *Thomas Wilson* Brewer in *Edinburgh*, being Creditor to the Memorialist, brought a Process, concluding to have the Memorialist's Office adjudged to her for Payment. Compearance was made for the Memorialist, and it was pleaded, that his Office is not adjudgeable. Lord *Kaims*, before whom the Cause came in course, having taken the Question to report, and ordered Memorials; the following is humbly submitted in Behalf of *Alexander Falconer* the Defender.

The Memorialist's Office is Keeper of the Register of Sasines, Renunciations, Reversions, &c. within the Town of *Lauder*, Bailliary of *Lauderdale*, and Sheriffdom of *Berwick*, granted to him during Life: At the same Time, however, it is certain that the Grant may be voided by Malversation. The Memorialist is advised that nothing is capable of being adjudged but what is the Debitor's Property, given to him, his Heirs and Assignes. A Man can give away, sell or dispose of his Property as he thinks fit, and consequently it may be affected for Payment of his Debts. On the other hand, his Creditors cannot attach Subjects which, though their Debitor has the Use of for some Time, yet are not his, which, consequently, he has it not in his Power to alienate. The Office can by no Means be looked upon as a patrimonial Interest of the Memorialist personally, and not to his Heirs or Assignes, which would expose him out for discharging this Office, which is a heavy Burden. It is granted to him, indeed, during Life, to give it away, or to sell it, but not after the Case, this Depute acts under the Memorialist, and he must be answerable for him: The Office, however, still remains with the Principal, and the Depute acts under his Authority, and his Doings are understood to be the same as done by the Principal. The present Case is pretty much the same with that of a Tack. A Tenant may have a Power to sublett, though, at the same Time, he cannot assign: And the Reason is plain, because, in the former Case, the original Tenant still continues bound to his Master, and answerable for performing all the Prestations in the Tack; but, in the latter Case, he is intirely divested, and the new Tenant put in his Place; which therefore cannot be done, without the Consent of the Master. It is certain, therefore, that as the Office in question is not *in commercio*, as it is not the patrimonial Interest of the Memorialist, as it is not given to his Heirs or Assignes, and as he can be deprived of it at any Time for Malversations, he cannot dispose of or alienate it, and consequently, it cannot be affected by his Creditors, or evicted from him for Payment of his Debts.

2do, The Office in question is of the greatest Importance to the Lieges, as upon it the whole Security of the Land-Rights depends. The King makes Choice of a proper Person to whom he may commit this important Trust; it would be ridiculous, therefore, if the Person chosen by his Majesty should have it in his Power to expose this Office to Sale, or that it should be adjudged by any Creditor of his. And the present Case is still more ridiculous, when we consider that the Pursuer is a Woman, incapable of discharging such an Office. Should she prevail in the present Action, the Consequences to the Records might be terrible: She cannot discharge the Office herself, though, at the same Time, she will no doubt insist upon having the Profits for Payment of her Debt. In what Manner, therefore, the Office would be discharged by one to whom she might give some trifling Share of the Emoluments, may be easily imagined.

3tio, The

3^{tho}, The Person appointed by his Majesty for discharging this Office is invested with a public Character, and his Attestations and Certificates bear Faith in all Cases: This Quality therefore cannot be communicated by him to another, and consequently neither can it be adjudged. The King has the sole Power of appointing Officers of this Nature; all Offices that fall either by the Death, Inability or Deprivation of the Officers, are only in his Gift; and it would be inroaching upon his Prerogative if any other Person should pretend to dispose of them, or impose an Officer upon his Majesty or the Public whom he did not approve of.

The present Question appears to the Memorialist to be so very clear that little more need be said to persuade your Lordships that the Action is not competent. The Pursuer, before the Lord Ordinary, could not adduce any Arguments either from Principles or Expediency, in support of her Plea: What she chiefly insisted upon was the Decisions in the Case of the heretable Usher and the King's Printer. These Decisions, however, afford no Argument in her favours. The former was entirely different; there the Office was granted to the Family of *Langton*, their Heirs and Assignees; it was truly a patrimonial Interest descending to the Heirs of the Family, and was capable of being assigned to whomsoever they thought proper: As therefore it was alienable by the Family, it could also of course be adjudged for Payment of their Debts. The other Decision in the Case of the King's Printer is also very different from the present Question; there the Gift was to Mr *Freebairn* for forty one Years, his Heirs, Assignees and Substitutes; it was therefore in his Power to alienate or give it away as he thought proper; and, if that was the Case, there can be no doubt that it was also adjudgeable for his Debts. The Arguments from Expediency above adduced are different

Case: The Office of King's Printer is of such a Nature that it may be by any body; the Printer himself has nothing to do, and the whole is done by his Servants; and it is of very little Importance to the Publick arising from this Grant.

to himself what Arguments can possibly be ad-
dressed to him: He shall say no more upon the Subject: It appears
Sufficiently that your Lordships will also be

СОВУМССО, 4-й и 5-й ОД

In respect whereof, See

Oct. 1759 Just Clerk this office not adjudgeable. The Crown PAT. MURRAY
appointed by the King can only make a legal registration, his Auditor cannot
Nisbet a ^{keeper of} Registers ~~a keeper of~~ cannot be imposed on the crown as more than a servant
can on a private person.

President Doubtful whether an office ^{which} requires faithfulness & industry was adjudicable, but such offices were granted to heirs they were found adjudicable. But this office does not go to heirs. The Decision in the outer house is regarded when acquiesced in. This not an old office. Unanimously determined that this office is not adjudicable.

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